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SUBJECT: SENIOR GOG OFFICIALS ACKNOWLEDGE NEED FOR PROFOUND  
JUSTICE SECTOR REFORMS

Classified By: Pol/Econ Couns Drew G. Blakeney for reasons 1.4 (b&d).

#### Summary

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¶1. (C) At an October 31 meeting on justice sector reform called by Vice President Espada, senior GOG leaders said they are on the verge of "losing the country" to criminals. Following CICIG Commissioner Castresana's biting critique of Guatemala's administration of justice, participants shared blame for the deplorable state of Guatemala's rule of law institutions, and exchanged specific suggestions for ways to make improvements. There was more consensus than disagreement. Vice President Espada said he would share the group's findings with President Colom and convoke a follow-up meeting. During Castresana's Nov. 3 meeting with President Colom, Colom committed to enacting several urgent reforms by January 1, 2009. End Summary.

#### VP Convenes Rule of Law Meeting

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¶2. (SBU) On October 31 Vice President Espada called a justice sector reform meeting in which the only foreign participants were the Ambassador, Pol/Econ Couns, and Carlos Castresana, Commissioner of the International Commission Against Impunity in Guatemala (CICIG). Other Guatemalan participants included the Minister of Government, Minister of Defense, the Attorney General, the Solicitor General, the interim Supreme Court President and another magistrate, a Constitutional Court magistrate, the incoming President of Congress, another Member of Congress, civil society representatives, and members of the presidential communications staff. Espada opened the meeting by saying that he had just reviewed Guatemala's Millennium Challenge Corporation (MCC) indicators with the Ambassador. While Guatemala's economic indicators were good, the political and social indicators were not. The GOG needed to improve administration of justice, Espada said, and he had asked CICIG Commissioner Castresana for a diagnosis of the problem.

#### CICIG: Impunity Rampant, Reform Needed

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¶3. (C) Castresana said there are no magic, short-term remedies for the collapse of Guatemala's rule of law institutions. In contrast to the internal conflict period, violence perpetrated by organized criminals, rather than by the state, is now the main concern. Laws, norms, and the institutional capacity of security and judicial institutions are inappropriate and inadequate to confront today's threats. In developing solutions, the GOG should try to anticipate long-term needs. Consensus is lacking on sorely needed administration of justice reforms. Castresana observed that the conviction rate for homicide cases in Guatemala over the last three years is seven percent, and it is even lower for

other kinds of crime. He said that according to Department for Control of Arms and Ammunition (DECAM, an MOD dependency) estimates, there are over 300,000 illegal firearms in Guatemala. CICIG is helping to reform the Attorney General's Office (Public Ministry), which is now cooperating somewhat more closely with the National Civilian Police (PNC). Castresana said the GOG should learn from the murders of some 2,500 Colombian judicial officials and institute special protections for judges trying organized crime cases. (Note: In a separate meeting with senior representatives of donor countries, Castresana agreed to provide a paper with specific recommendations for administration of justice reforms. Donors may use the paper to inform their discussions with the GOG. End Note.)

#### Needed Rule of Law Reforms

14. (SBU) During the wide-ranging conversation that ensued, there was general consensus that Guatemala needs to undertake the following reforms:

- Update the antiquated, 1973 Penal Code so that it contemplates modern crimes. A 2004 draft that never emerged from review by the AG's Office and the Supreme Court could be used as a starting point.
- Allow authorities to execute search warrants at night, instead of only during daylight hours, as the law currently stipulates.
- Build a maximum security prison.
- Develop and institute a judicial career track that appropriately recognizes and rewards good performance and punishes poor performance.
- Establish specialized courts, members of which would be adequately protected, to handle sensitive organized crime cases. Additionally, some participants favored establishment of special prosecutorial, investigative, and police units to work directly with these courts.
- Allow vulnerable judges in rural areas to transfer sensitive cases to better-protected judges in the capital.
- The Constitutional Court should finish its review of and release a bill that would reform and limit the use of legal injunctions ("amparos").
- Provide rule of law institutions with adequate budgets.

15. (SBU) Member of Congress Oliverio Garcia of the opposition Patriot Party warned the Vice President not to establish a commission on justice sector reform, "or nothing will get done." He counseled Espada to instead lead a small working group that would respond directly to the needs outlined by the state's rule of law institutions.

#### "We Could Lose the Country"

16. (C) Minister of Government Francisco Jimenez asserted that the GOG "could lose the country" to organized criminals if action was not taken. Vice President Espada agreed. Jimenez said control had already been lost of some rural parts of the country, such as Izabal Department in eastern Guatemala, as well as in some urban areas, such as the capital's Zone 18, "where there is no law." Solicitor General Baudilio Portillo Merlos accused police of regularly perpetrating serious crimes. He said he regularly receives death threats, and that criminals have also threatened the lives of his grandchildren. Portillo Merlos said that on paper the state has recovered many farms and ranches from narcotraffickers, especially in Peten and Izabal Departments. However, heavily-armed narcotraffickers are still present on the properties, and the police would need army support to remove them. Minister of Defense Garcia nodded in agreement.

17. (SBU) The Ambassador congratulated the group on their efforts. He emphasized that Guatemala's security situation is bad and deteriorating ("va de mal en peor"), and observed that it is having a deleterious effect on business, investment, and poverty reduction efforts. Narcotraffickers

were partly to blame. Vice President Espada agreed. The Ambassador emphasized that the USG is the GOG's partner, and discussed the Merida Initiative. He encouraged the GOG to effectively implement the new Organized Crime Law and increase the tempo of extraditions to the U.S.

¶8. (SBU) Roberto Ardon, Executive Secretary of CACIF (Coordinating Council of the Chambers of Agriculture, Commerce, Industry, and Finance) and private sector representative to the Advisory Council on Security (CAS), encouraged Vice President Espada to continue to convene the group. He said that in 2000 the private sector and the GOG had reached a compromise on tax reform. He predicted that they could do so again in order to pay for improved security, but that the GOG would need to better define its security objectives and means for reaching them before the private sector would agree to more taxes. Espada committed to distributing an executive summary of the meeting's findings to participants, to sharing them with the President, and to convening a follow-up meeting.

#### Colom Commits to Swiftly Enact Some Reforms

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¶9. (C) CICIG Commissioner Castresana told the Ambassador November 4 that he had met with President Colom, Attorney General Velasquez, Minister of Government Jimenez, and four magistrates of the Supreme Court's Penal Chamber on the night of November 3. Colom committed to enacting the following reforms by January 1, 2009:

- The Supreme Court's Penal Chamber would name two judges to review requests and issue warrants for telephone intercepts;
- The judiciary would move sensitive organized crime cases from the countryside to better protected courts in Guatemala City;
- A new maximum security prison would be established in some existing facility outside Guatemala City -- possibly a military base -- to hold the country's most dangerous detainees. Judges and prosecutors would have offices on-site.

Castresana said he believed wiretaps could also be executed

by January 1. Necessary equipment could be brought in quickly; the AG's Office was prepared to polygraph a vetted wire-tapping unit and had set aside space for the unit and its equipment; one telephone company had told Castresana it would be ready to begin in four weeks, and another said it would be ready in ten. The Ambassador said he thought that getting all elements into place might take until mid-2009. (In a November 6 talk with the Ambassador, President Colom committed to starting wiretaps by January 15.)

#### Comment

¶10. (C) CICIG Commissioner Castresana set the tone for an unusually candid review of the administration of justice by the officials responsible for it. The group's specific suggestions for reform appeared to be realistic and promising, and Colom's follow-up meeting with Castresana suggested the GOG will pursue them further. That said, the GOG tends to be weak on policy execution. Vice President Espada deserves credit for convoking this group, fomenting much-needed interagency cooperation.  
McFarland